83-503

NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

R. D. BOB RIPPETOE

Petitioner

versus

STATE OF MISSISSIPPI

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE MISSISSIPPI SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR PETITIONER

QUESTIONS PRESENTED FOR REVIEW

1. (a) Was Petitioner denied "*sufficient*" due process by the evidentiary rulings of the trial judge with regard to his proffered testimony regarding evidence of his lack of intent to commit the crime of "false pretenses" by trial court's refusing to allow him to explain how the controversy arose, and specifically, in overruling the proffer of defense counsel, Honorable John C. Johnston, of Gulfport, Mississippi?

(b) Do Mississippi Supreme Court Rules 34 and 45 deny bond unconstitutionally?

(c) Did the conduct of the trial judge deprive the Defendant of his constitutional rights to "sufficient" due process under the teachings of *Jackson vs. Commonwealth of Virginia* 443 U.S. 307, 61 L.Ed.2d 560, 99 S.Ct. 2781, Reh. Den. (US) 62 L.Ed.2d 126, 100 S.Ct. 195 (1979).

PARTIES TO THE PROCEEDINGS

1. Bill Allain, Attorney General of the State of Mississippi,

2. Mr. R. D. Bob Rippetoe.

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IN THE

SUPREME COURT OF THE UNITED STATES

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Respondent

PETITION FOR WRIT OF CERTIORARI TO THE MISSISSIPPI SUPREME COURT

R. D. Bob Rippetoe respectfully petitions for a Writ of Certiorari to review his conviction in the trial court in Hancock County, Mississippi, affirmed by the Mississippi Supreme Court on August 17, 1983, without opinion, sustaining a jury verdict whereby Petitioner was convicted of the crime of "false pretenses", allegedly defrauding the Hancock County School Board in the sum of $4,840.00 by "false pretenses".

VERDICT AND OPINION BELOW

The verdict of the jury in the Hancock County, Mississippi, Circuit Court for the Second Judicial District of the State of Mississippi is appended hereto as the Circuit Court's "Order". The judgment of the Mississippi Supreme Court as of this date is appended hereto, being a "Judgment" without opinion.

JURISDICTION

This Petition is filed in a timely manner pursuant to Rule 20 of the United States Supreme Court.

The jurisdiction of the Supreme Court is based on the "due process" clauses of the 5th and 14th Amendments to the United States Constitution, as well as the 6th Amendment to the United States Constitution and Title 28 USCA §1254.

QUESTIONS PRESENTED FOR REVIEW

1. (a) Was Petitioner denied "*sufficient*" due process by the evidentiary rulings of the trial judge with regard to his proffered testimony regarding evidence of his lack of intent to commit the crime of "false pretenses" by trial court's refusing to allow him to explain how the controversy arose, and specifically, in overruling the proffer of defense counsel, Honorable John C. Johnston, of Gulfport, Mississippi?

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CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U. S. Constitution, Amendment V

> No persons shall be held to answer for a capital crime, or otherwise infamous crime. . .; nor shall any persons be subject for the same offense to be twice put in jeopardy of life or limb. . .; nor be deprived of life, liberty or property without due process of law. . .

U. S. Constitution, Amendment VI

> . . . and to have Assistance of Counsel for his defense.

U. S. Constitution, Amendment VIII

> Excessive bail shall not be required. . .

U. S. Constitution, Amendment XIV

> . . . nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any persons within its jurisdiction equal protection under the laws.

Title 28, USCA §2254

> (a) The Supreme Court, a Justice thereof, a Circuit judge, or a District Court, shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court

only on the ground that he is in custody and in violation of the constitution, laws or treaties of the United States.

(b) . . . Habeas corpus in behalf of a person in custody pursuant to judgment of a state court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the state, or that there is either an absence of available state corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

* * *

(e) If the applicant challenges the sufficiency of the evidence introduced in such state court proceeding to support the state court's determination of a factual issue may therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. . .

STATEMENT OF THE CASE

The Mississippi Supreme Court entered its judgment August 17, 1983, in Cause No. 53,870 of the Supreme Court of the State of Mississippi, without opinion, affirming the "Order" of the trial court after jury verdict convicted Petitioner of false pretenses in presenting a bill to the Hancock County School Board in the amount of $4,840.00. Petitioner had been free on $5,000.00 bond since July 28, 1981, and faithfully appeared at the office of the Sheriff of Hancock County on the designated date of August 17,

1983, where he there remains incarcerated in the County Jail for six (6) months, six (6) months of the sentence having been suspended on "good behavior". Petitioner was represented by Honorable John C. Johnston, attorney, in the trial Court. Petitioner here was represented by the undersigned in the appellate stages in the Mississippi Supreme Court where the issue of the 6th Amendment right to "effective counsel" was presented to the Mississippi Supreme Court. Also, Petitioner's brief in the Mississippi Supreme Court sought relief on the grounds that the trial judge erred constitutionally in refusing to allow the Defendant to give his version of how the $4,840.00 "mistake" occurred in billing when he was doing contracting work for the Hancock County, Mississippi, School Board, at their request, on a cost-plus basis, there having been evidence admitted at the trial that the School Board had actually "loaned" money to Petitioner in order to buy materials during the course of his repairs after a tornado had destroyed the elementary school known as Gulf View Elementary. During the course of the trial, Petitioner took the stand and attempted to give his version of how the mistake occurred, and give evidence that the $4,840.00 "mistake" was corrected all at a time prior to his indictment, and in the due course of dealings, such that his was not a departure from the ordinary course of dealings with the School Board.

The trial court's failure to allow this evidence presents the question of whether his trial counsel effectively developed the proof with regard to the creditor/debtor relationship, removing this case into a sphere of civil liability negating by necessity any notion of imprisonment for debt. Petitioner's attempts to introduce evidence to explain the circumstances under which the "mistake" occurred were to no avail, and notwithstanding his appeal to the Mississippi Supreme Court, the Supreme Court, without opinion, af-

firmed the "Order" of the trial judge. Petition for Rehearing, filed August 24, 1983, and Application for Bail, filed August 23, 1983, are pending, but no date for hearing has been set.

REASON FOR GRANTING THE WRIT

In *Jackson vs. Commonwealth of Virginia, supra,* this court delineated the parameters of sufficient due process. Although this court reached the conclusion that the appellate standard of review did not require reversal there, it is respectfully submitted that to allow the States to fail to allow the accused to submit evidence on his own behalf which negates his intent to defraud in a "false pretenses" charge or indictment does violence to the United States Constitutional rights guaranteed to the citizens.

As is stated by this court in *Jackson vs. Commonwealth of Virginia, supra,*:

> The respondents have argued nonetheless, that whenever a person convicted in a state court has been given a full and fair hearing" in the state system - meaning in this instance, state appellate review of the sufficiency of the evidence - further federal inquiry - apart from the possibility of discretionary review by this Court - should be foreclosed. This argument would prove far too much. A judgment by a state appellate court rejecting a challenge to evidenciary sufficiency is, of course, entitled to deference by the federal courts, as is any judgment affirming a criminal conviction. But Congress in §2254 has selected the federal district court as precisely

> the forums that are responsible for determining whether state convictions have been secured in accord with federal constitutional law. The federal habeas corpus statute presumes the norm of a fair trial in the state court and adequate state post-conviction remedies to redress possible error. See 28 U.S.C.A. §2254 (b) (d), (28 U.S.C.A. §2254 (b) (d). What it does not presume is that these state proceedings will always be without error in the constitutional sense. The duty of a federal habeas corpus court to appraise a claim that constitutional error did occur - reflecting as it does the relief that the "finality" of a deprivation of liberty through the invocation of the criminal sanction is simply not to be achieved at the expense of the constitutional right - is not one that can be so lightly adjured. Ibid at 61 L.Ed.2d 560, 576.

The constitutional issue presented in the case *sub judice* is the sufficiency of the evidence that Defendant was allowed to produce on his own behalf. Conversely, the issue is the insufficiency of the evidence that the Petitioner was allowed to produce on his own behalf to negate his intent to commit a crime which would tend to show that he made a common ordinary human mistake in billing the School Board $5,040.00 in one instance, and $4,840.00 in another instance for the same work. This proof was contained in the proffer which was excluded from the jury by the trial judge. The lack of any procedure for bail in Mississippi is also at issue, but efforts have not been exhausted at present.

It is assumed that a Defendant in Mississippi is entitled to have a "good faith" defense in such a criminal prosecu-

tion, and the same is found in the Encyclopedia Law:

> (A) ADMISSIBILITY OF EVIDENCE OF SUBSEQUENT PAYMENTS - EVIDENCE OF WANT OF INTENT
>
> Although subsequent restitution or repayment is not a defense when money is obtained by false pretenses. (cit. om.) Evidence or repayment or restitution may be admissible to show that the accused had entered into the transaction involved in good faith and without intent to defraud.[1] 32 AmJur 2d False Pretenses §73; see also *Woodfork v. State* 377 So.2d 912 (Miss. 1979)

Petitioner has filed an APPLICATION FOR BAIL PENDING PETITION FOR WRIT OF CERTIORARI IN THE SUPREME COURT, said petition being filed on August 24, 1983, along with his PETITION FOR RE-HEARING filed on August 26, 1983, and has at this time not been advised of any decision of the Mississippi Supreme Court notwithstanding a written request that the matter be treated as "urgent" since Petitioner is incarcerated in the Hancock County, Mississippi, County Jail with no procedure to apply for bail being afforded to him by the Rules of the Supreme Court of the State of Mississippi.[2] Petitioner

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1 *People v. Braver* 229 Cal. App. 2d 303, 48 Cal. Rptr. 142, 10 ALR 3rd 565; *People v. Hand*, 127 Cal. App. 484, 16 P.2d 156, *State v. Johnson*, ____Iowa____, 196 NW2d 563; *State v. Mason* 62 Mont. 180, 204 p. 258; *Armstrong v. State*, 123 Tex. Crim. 372, 50 SW2d 140.

2 Rule 34 provides in pertinent part, ". . .bail should not be allowed after affirmance in this court", and Rule 45 provides for "motions and petitions filed with this court for release on appearance bond

urges here that Rule 45 and Rule 34 of the Mississippi Supreme Court taken together effectively deny him any procedure to even be considered for bail and that the same is in violation of Article 1, Section 9 of the U. S. Constitution and is contrary to the letter and the spirit of 28 U.S.C.A. §2254. This relief is sought only in the context of this particular case (assuming the Mississippi Supreme Court denies application even after this Petition is filed), and Petitioner makes no claim that the state may not deny bail in certain cases of a more serious nature. It is the abrogation of the procedural right to apply for bail in any case which violates the United States Constitution by requiring the Defendant to remain in jail without any procedural remedy to have the Mississippi Supreme Court consider this Petition for application for bail in a reasonable amount pending perfection of this Petition. Furthermore, his continued incarceration without any such procedural remedy constitutes "excessive bail" in violation of the 8th Amendment to the United States Constitution. Petitioner has attempted to exhaust all of his remedies as required by *Rose vs. Lundy*, 102 S.Ct. 1198 (1982), 455 U.S. 509, 71 L.Ed.2d 379, where Justice O'Connor held that all state remedies, if any, must be exhausted. See also *Chambers vs. Mississippi* (Miss. 1972) 92 S.Ct. 754, 405 U.S. 1205, 30 L.Ed.2d 733.

The denial by the Mississippi Supreme Court of any procedure for applying for bail is unconstitutional in that

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2 (Continued)
pending petition to the U.S. Supreme Court for certiorari seeking a review of a decision of this court affirming a criminal conviction" to be considered *only* when accompanied by "a duplicate copy of the Petition for Certiorari previously filed with that court showing a genuine federal question previously presented to this court." Petitioner therefore is presently unable to file for Habeas Corpus under 28 U.S.C.A. §2254 because of the exhaustion of state remedies doctrine.

it does violence to Article I, Section 9. *California vs. Alcorcha* (1976) 86 S.Ct. 1359, ____ U.S. ____, 16 L.Ed.2d 435. There Mr. Justice Douglas indicated that he "incline(d)" the view that this prohibition applied to the states as well as to the federal government. "It also is apparent that bail - which by reason of the 8th Amendment, may not be excessive - is encompassed within the broad reach of habeas corpus which it often does service for the writ. I assume, therefore, should the state abolish bail, it would violate Article I, section 9." Furthermore, Justice Douglas also stated that, "In such event the judicial power granted by Article III, though not implemented by legislation (at that time) would seem to be adequate to grant relief in all state cases even though the cases were neither in this court or en route here." (Cit. Om.) *Ibid* at 1361.

(B) "SUFFICIENT" DUE PROCESS NOT ACCORDED TO PETITIONER

Appended hereto is the verbatim transcript from the proffer which was excluded from the jury, and a scintilla of evidence showing that Petitioner and School Board had a debtor/creditor relationship at the time of the alleged crime. There can be no imprisonment for debt.

The totality of dealing between Petitioner and the School Board showed that mistakes and overpayments were made routinely. Notwithstanding the question of incompetency of trial counsel, he did move for a J.N.O.V., and, alternatively, a new trial on the record. The state court overreached this opportunity to correct the error. The State Supreme Court affirmed. It is said:

> An instruction that intent is a condition of the mind, not always susceptible of direct

and positive proof, and that it may be inferred from the actions and the words at the time and preceding the time of the doing of the act, has been held to be correct and adequate for the guidance of the jury.[3]

In those cases where the evidence warrants, it is the duty of the court to instruct that the misrepresentation was not an inducing, controlling motive, with the prosecutor to part with the property, there should not be a conviction. Therefore, instructions in effect excluding from the consideration of the jury testimony of the prosecutor to part with the property, there should not be a conviction. Therefore, instructions in effect excluding from the consideration of the jury testimony of the prosecutor tending to show that he was not influenced in parting with the property by the representation of the accused are erroneous as being misleading.[4]

The Court is not required to instruct on its own motion that evidence of restitution, thought not a defense to obtaining property by false pretenses, tends to show that no fraud was intended; however, such an instruction is proper if requested.[5] 32 Am.

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3 *Nelson vs. United States*, 97 App D.C. 6, 227 F.2d 21, 53 ALR 2d 1206, cert. den, 351 U.S. 910, 100 L.Ed. 1445, 76 S.Ct. 700.

4 *Woodbury vs. State*, 69 Ala. 242.

5 *People v. Katzman* (1st Dist.) 258 Cal. App. 2d 777, 66 Cal. Rptr. 319. As to the admissibility of evidence of subsequent payments as want of intent, see §73 supra.

Jr. 2d False Pretenses, §75, p. 226.

Trial counsel proffered testimony by Petitioner to explain how the mistake in submitting one bill which had merged into another larger one for a different amount was made. The Court's refusal to allow the same into evidence simply denies to Petitioner a sufficiently fair trial.

Petitioner's trial counsel could not ask for any instruction on his "restitution" by debit and credit because the proof was not allowed.

CONCLUSION

The trial court erred in failing to perceive the constitutional mandates of the due process clauses and the letter and spirit of *Jackson (supra)*. This resulted in Petitioner's being deprived of his right to give testimony on his own behalf on:

(1) Non-reliance by Board,
(2) Past billing errors,
(3) Procedure for corrections,
(4) How he credited the School Board for $4,840.00,
(5) Why the mistakes occurred during late night calculations.

The denial is State action, and this Court should grant Certiorari to the Mississippi Supreme Court for review of the record under *Jackson, supra*, and to review the lack of bail procedure under 28 U.S.C.A. §2254, and related constitutional standards to allow a reasonable bail to be promptly fixed.

RESPECTFULLY SUBMITTED this the 16th day of September, 1983.

MIZE, THOMPSON & BLASS

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NORMAN BRELAND

Counsel of Record for Petitioner

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CERTIFICATE OF SERVICE

I, NORMAN BRELAND, of MIZE, THOMPSON & BLASS, Attorney for the Petitioner, and a Member of the Bar of the Supreme Court of the United States, hereby certifies that I have served the foregoing Petition for Writ of Certiorari to the Mississippi Supreme Court on Counsel for Respondent, by depositing same in the United States Mail, postage prepaid, on the 26th day of September, 1983, to Honorable Catherine Walker Underwood, Assistant Attorney General, Office of the Attorney General, P. O. Box 220, Jackson, Mississippi.

This the 26th day of September, 1983.

Norman Breland

NORMAN BRELAND

APPENDIX A

IN THE CIRCUIT COURT OF HANCOCK COUNTY,
MISSISSIPPI JULY TERM, A. D. 1981

STATE OF MISSISSIPPI
VS.
R. D. RIPPETOE, a/k/a BOB RIPPETOE

NO. 5146

ORDER

Trial in this Cause having begun on Monday, July 27, 1981, with a jury consisting of Daniel Seal and eleven (11) others and two (2) alternates, all good and lawful citizens of Hancock County, Mississippi, duly drawn and empaneled from the regular jury panel for this, the Third Week of the July, 1981 Term of Court, duly sworn according by law as such, began to hear all of the testimony in this cause, oral as well as documentary. At the conclusion of the State's case, night had fallen and the Court recessed Court until the norrow after duly charging the jury according to law, and permitted them to part and go their several ways.

When Court re-convened on Tuesday, July 28, 1981 the trial was resumed, with the Defense presenting its case, and after both sides rested, the jury having heard all of the testimony, oral as well as documentary, then heard the instructions of the Court and arguments of counsel, and retired (with the exception of the two alternates who were then and there excused by the Court), and presently returned into open Court the following verdict, to-wit:

"WE, THE JURY, FIND THE DEFENDANT GUILTY OF THE CRIME OF FALSE PRETENSE."

IT IS, THEREFORE, THE ORDER OF THE COURT, that the Defendant herein, R. D. "BOB" RIPPETOE be, and he is hereby sentenced to serve one year in the Hancock County Jail, fined $1[illegible],520.00, and required to make restitution in the amount of $4,840.00 to the Hancock County, Mississippi Board of Education. Six months of the jail sentence is suspended subject to the Defendant's good behaviour and subject to the Defendant working faithfully on a public works project with the City of Bay St. Louis Recreation Department while serving the 6 months.

ORDERED AND ADJUDGED, this the 28th day of JULY, A. D., 1981.

/s/ Kosta N. Vlahos
CIRCUIT JUDGE

APPENDIX B

* * * * *

[170] in State's Exhibit 1, a portion of bill number 6, is that correct?

A. Yes.

Q. So what you did is you corrected a corrected bill of Mr. Ladner's to the School Board for payment, is that correct?

BY MR. NECAISE: Object to the leading, If The Court Please.

BY THE COURT: Don't lead the witness. Just ask the questions, Mr. Johnson.

BY MR. JOHNSON: (Continuing)

Q When you submitted the bill to the School Board was it different from the bill that Mr. Ladner had given you?

A Yes, it was $5,040.00 rather than $4,840.00.

Q In the conduct of that particular job at Gulfview School, dealing with all of these various people, did you notice any errors being made?

A Very definitely.

Q What type errors?

A Constantly we were correcting errors; the School Board would bring them to my attention, or I would bring it to their attention. There was one change order they paid me $1,000.00 for and it didn't cost me but $793.00, so I gave them back $207.00. I told them I would pay the phone bill because we were constantly using it, calling Gulfport for supplies. C & S Carpet overcharged us one time and gave us a rebate, so I gave that back to the School

* * * * *

[179] THE JURY WAS THEREUPON RETIRED FROM THE COURTROOM, AND THE FOLLOWING PROCEEDINGS WERE HAD IN THE ABSENCE OF THE JURY:

BY THE COURT: You may preceed.

BY MR. JOHNSON: (Continuing)

Q How was the bill brought to your attention, and by whom?

A It was brought to my attention on the telephone by Billy Sills.

Q What conversation, if any, did you have with Mr. Sills?

A He said that I had made a mistake in my billing, and Werlin didn't work that week.

Q And what did you tell him?

A I told him I thought he did, and I would check into it and see.

Q What effort did you make to check and see what your records showed?

A My wife is my accountant. I had her go back and check the records, and sure enough, he didn't work, and when I found out he didn't work, I wrote the School Board a check for $4,840.00.

Q Now, when you took that check to the School Board, who did you give it to?

[180] A I didn't take it to the School Board. Billy Sills was at Diamondhead when I saw him the next time after I discovered the error, and I gave him the check at Diamondhead.

Q Did you have any knowledge that you were under any investigation of any kind, at this point and time?

A Not really. I knew there was a Grand Jury investigation going on, but I didn't know they were investigating me personally.

Q You had no knowledge of this duplicate bill, until

it was brought to your attention by Mr. Sills?

A No, not until it was brought to my attention.

Q Did you ever have any conversation with Brenda Ladner about the check?

A Yes, I did.

Q What was that conversation?

A Billy did not, it was my understanding, know how to handle that type situation, so he got with Brenda, which Brenda is the bookkeeper over there, and Brenda said, "Bob, don't worry about it, we will just settle up at the end." So, meanwhile they still had my check for $4,840.00, which has not been cashed until this day, or could be cashed any day. And they still owe me $8,000.00 - and - something - dollars.

Q Was that procedure in any way unusual from any of the other procedures that had gone on with regard to overages and underages in your payments?

A Not at all. We swapped money back and forth through [181] errors at least every other week. They loaned me money if I needed money to get something at a discount; it was not unusual at all.

Q What do you mean they loaned you money?

A They loaned me $11,000.00 one time: $8,000.00 for floor tile, which I could get it for less by paying for it COD, and $3,000.00 for shingles for my roof, coming from Byrd Roof in Shreveport, Louisiana.

BY MR. JOHNSON: I don't have anything further on the proffer, If Your Honor Please.

BY MR. NECAISE: We object to its not being admissible, If The Court Please.

BY MR. JOHNSON: I submit to the Court that it is admissible, If The Court Please. Mr. Necaise is taking the position that the check was given in restitution. It's a semantic on words, on what he considers restitution, that I don't believe is. Restitution is a situation like this: if a man goes

into a 7-11 with a big ole pistol and sticks the place up and takes the money, and goes outside in the parking lot and said "oh, wait a minute; I'm going to go back in here and say, 'here, lady, here's your money back', and I didn't commit the crime of armed robbery." That guy had knowledge and knew that he had gone in there with a gun and stuck the place up. The testimony is undisputed [182] in this courtroom that Mr. Rippetoe had no knowledge the bill was false. He thought that the thing ought to go in. He didn't do any different with this bill than he had done with the other transactions with the School Board. I submit, If Your Honor Please, it goes to the question of intent and it goes to the question of knowledge, and it goes to the question of a wilfull and felonious act, and all the things the State has got to prove, and the man has a right to defend himself. He's got a right to tell this jury and let them decide whether or not he had this intent, coupled with all the other testimony. I think it is admissible, because if the Court doesn't allow that in, the jury is not going to have the benefit of what really happened. It's not restitution; he's not paying something back; he is not paying anything back; they are just correcting an error, like they corrected other errors. It's not restitution. I agree with the Court that restitution is not a defense. This is not his defense. His defense is that it was an honest, clerical error, a mistake that he made; and that he didn't handle this transaction in any other fashion than he had handled the others. We are not standing here and telling this jury "we are not guilty, because we paid the money back." He didn't have to pay the money back; he didn't have to give them a check; that wasn't the way they were doing business, whether it's right or wrong, or good business or [183] bad business, I don't know. That's not for me to decide. It's just what actually happened, and I think this jury and this Court ought to let the facts in, let the truth be known, so this man can properly defend himself, Your Honor. It's not restitution.

BY THE COURT: Mr. Rippetoe, on what occasion, or how many days, weeks or months later did you meet Mr. Sills at Diamond Head to give him the check back?

BY THE WITNESS: Sir, it was probably around a month, because I never could get Patsy to take time to check it and see. She owns a liquor store, and she was running her business and everything, and it wasn't that important. We didn't consider it a big thing.

BY THE COURT: It was a month after Mr. Sills had called you?

BY THE WITNESS: Probably.

BY THE COURT: And how long after you had received payment, or tendered the bill?

BY THE WITNESS: I got the money July 11th.

BY THE COURT: When did you give the money back to Mr. Sills?

BY THE WITNESS: October 8th. But it wasn't brought to [184] my attention until like September or something.

May I say something to you, Your Honor?

BY THE COURT: We are outside the presence of the jury.

BY MR. NECAISE: And off the record, Judge.

BY THE COURT: Yes, sir.

(The witness makes statement to Court)

BY THE COURT: We will take that up at a leter time. I have to rule on the admissibility of this proffer by your attorney.

* * *

THE COURT WAS THEREUPON RECESSED FOR A FEW MINUTES.

* * *

BY THE COURT: The question before the Court is as to whether or not the proffer of testimony is of the nature of a mistake, and/or a mistake of fact versus whether it is an attempt to get before the jury the fact, if it is a fact, that restitution was in fact made. And the Court, after having reviewed the authorities cited by the State, Sherman v. State, 108 So 2d 205, and a Law Journal article submitted to the Court by the Defendant, and primarily Grant's Summary of Mississippi Law, the Court is going to hold that the proffer of testimony is not admissible be-

* * * * *

[221] 1:00 PM

THE JURY WAS THEREUPON RETURNED TO THE COURTROOM, AND THE FOLLOWING PROCEEDINGS WERE HAD:

BY THE COURT: You may proceed.

BILLY D. SILLS was thereupon called as a witness on behalf of the Defendant, and having been previously sworn, testified further as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q State your name for the record, please.
A Billy Sills.
Q You are the same gentleman who testified yesterday in this hearing?
A Yes, sir.
Q You are the Superintendent of Schools of Hancock County, is that correct?
A Yes.
Q Calling your attention to the middle of May of 1980, when this tornado hit the Gulfview School; you recall that, don't you?
A Yes.
Q Do you recall, on behalf not only of your self, but

* * * * *

[227] errors, if any, have to be known by him, not what someone told him, and further that it has to be as to Werlin Ladner. I would overrule that as to Werlin Ladner, but would sustain it as to the predicate for the finding out how he obtained that information.

BY MR. JOHNSON: (Continuing)

Q Would you, as you discovered it, look at these invoices that were incorrect or had errors on them, and examine them?
A Yes.
Q So you, of your own personal knowledge, knew that some of the invoices for some of the bills submitted at various times contained errors?
A Yes.
Q Were those errors corrected?

BY MR. NECAISE: Object to that, If The Court Please, as immaterial.

BY THE COURT: Sustained.

BY MR. JOHNSON: (Continuing)

Q Now, in your opinion, Mr. Sills, did Bob Rippetoe try to cheat and defraud the Hancock County School Board?
A No.

* * * * *

APPENDIX C

IN THE SUPREME COURT OF MISSISSIPPI

AUGUST 17, 1983, COURT SITTING

R. D. RIPPETPE, A/K/A BOB RIPPETOE

#53,870

STATE OF MISSISSIPPI

This cause having been submitted at a former day of this Term on the record herein from the Circuit Court of Hancock County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 28th day of July, 1981, a conviction of False Pretense and a sentence to serve a term of One (1) Year in the County Jail With Six (6) Months suspended and fined $14,520.00 and Restitution of $4,840.00, be and the same is hereby affirmed. It is further ordered and adjudged that the appellant do pay all of the costs of this appeal to be taxed for which let proper process issue.

MINUTE BOOK "BW" PAGE 411

I Robert E. Womack, Clerk of the Supreme Court of the State of Mississippi, do hereby certify that the foregoing is a true and correct copy of the judgment entered by the Court in the cause herein stated, as the same appears of record on file in my office.

Given under my hand, with the seal of said Court affixed, at office, in the City of Jackson, Miss., this the 18th day

of August, A. D., 1983.

/s/ Robert E. Womack